

Claimant appeared by and through her attorney, Tamara Pistotnik of Wichita, Kansas. The respondent and its insurance carrier appeared by their attorney, Eric K. Kuhn of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Eric Yost of Wichita, Kansas. There were no other appearances.

RECORD

The record as specifically set forth in the Award of the Administrative Law Judge is herein adopted by the Appeals Board.

STIPULATIONS

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

What is the nature and extent of claimant's injury and disability, if any?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Administrative Law Judge awarded claimant a twenty-two percent (22%) permanent partial general body disability. For the purposes stated below, the Appeals Board finds claimant is entitled to a twenty-eight percent (28%) functional impairment to her right upper extremity for the injuries suffered while employed with the respondent for a date of injury of February 19, 1991 through March 31, 1993.

Claimant alleges repetitive use injuries to both upper extremities beginning February 19, 1991 as a result of her duties as a shipping/receiving clerk at Boeing. Claimant earlier filed workers compensation claims against Boeing for bilateral carpal tunnel in 1986 and in 1989 for additional injuries to her upper extremities. Both of these claims resulted in lump sum settlements to the claimant. Claimant's pre-existing problems also resulted in claimant being assessed substantial work restrictions.

In 1989 the claimant was diagnosed by Dr. Ernest Schlachter as having overuse syndrome of both shoulder girdles and overuse syndrome of both wrists. Dr. Schlachter also diagnosed claimant with Raynaud's phenomenon and rated her at fifty-five percent (55%) permanent partial impairment to each arm due to the Raynaud's phenomenon. He also assessed claimant a five percent (5%) permanent partial functional impairment for each shoulder and a ten percent (10%) permanent partial functional impairment to each upper extremity as a result of claimant's carpal tunnel syndrome. This combined to a sixty percent (60%) permanent partial impairment of function to the body as a whole. Dr. Schlachter recommended claimant avoid repetitive pushing, pulling, twisting and grasping motions with either arm or hand and advised against repetitive lifting over fifteen (15) pounds with either hand or arm and further advised claimant not work in cold environments or with vibratory tools.

Claimant was examined and treated by Dr. James Gluck, a board-certified orthopedic surgeon specializing in hand/microvascular surgery. Dr. Gluck opined that the claimant never fully recovered from her injuries in 1986 and in 1989. He rated claimant at twenty-eight percent (28%) permanent partial impairment of function to the right upper extremity and ten percent (10%) permanent partial impairment of function to the left upper extremity. He restricted claimant to fifteen (15) pounds occasional lifting, five to seven (5-7) pounds frequent lifting, overhead lifting occasionally of up to five (5) pounds, restricted claimant from pushing and pulling greater than twenty-five (25) pounds occasionally, advised against pushing or pulling more than ten to fifteen (10-15) pounds frequently and restricted claimant from gripping with the right hand greater than fifteen (15) pounds and with the left hand greater than twenty (20) pounds. He advised that claimant not repetitively grip or grasp with either hand and avoid repetitive fine motor activities. He further felt claimant should be restricted from cold temperatures and should avoid pressure on the palms. If claimant worked in a job requiring pressure on the palms she should wear impact gloves.

On cross-examination Dr. Gluck advised he was not aware of claimant's left side suffering any worsening as a result of the injuries subsequent to February 19, 1991. He noted a definite worsening on the right side. He further opined that claimant's history indicated definite problems in the left shoulder, elbow and wrist. He stated that his twenty-two percent (22%) whole body impairment which combined both upper extremities was not an indication that she had a permanent aggravation on the left side subsequent to February 1991.

K.S.A. 44-501(a) states in part:

"In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 44-508(g) defines the burden of proof as follows:

"'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

The burden of proof is upon the claimant to establish his right to an award of compensation by proving all the various conditions on which his right to a recovery depends. This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

It is the function of the trier of facts to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. The trier of facts is not bound by the medical evidence presented in the case and has a

responsibility of making its own determination." Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

The evidence presented does not establish by a preponderance of the credible evidence that claimant suffered additional injury to her left upper extremity during the period February, 1991 through March 31, 1993. The Appeals Board finds the medical evidence of Dr. Gluck to be persuasive in supporting an award to claimant's right upper extremity only.

K.S.A. 1992 Supp. 44-510e(a) states in part:

"Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence."

The only medical evidence submitted in this matter dealing with claimant's functional impairment is that of Dr. James Gluck. Dr. Gluck assessed functional impairment to both of the claimant's upper extremities but opined the claimant gave no indication of any worsening on the left side of a permanent nature. As such, the Appeals Board finds the functional impairment assessed by Dr. Gluck to claimant's right upper extremity of twenty eight percent (28%) is appropriate and claimant is awarded same.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl dated March 16, 1994 should be and is modified and an award of compensation is herein entered in favor of the claimant, Sharon L. Fisher, and against the respondent, Boeing Military Airplanes and its insurance carrier, Aetna Casualty & Surety Company, and the Kansas Workers Compensation Fund for a twenty-eight percent (28%) functional impairment of the right upper extremity.

Claimant is entitled to 73 weeks of temporary total disability compensation at the rate of \$299.00 per week in the sum of \$21,827.00 followed by 38.36 weeks permanent partial functional impairment at the rate of \$299.00 per week in the sum of \$11,469.64 for a total award of \$33,296.64.

As of March 7, 1995, there is due and owing claimant 73 weeks of temporary total disability compensation at the rate of \$299.00 per week or \$21,827.00, followed by 28 weeks of permanent partial disability compensation at the rate of \$299.00 per week in the sum of \$8,372.00, for a total of \$30,199.00 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$3,097.64 is to be paid for 10.36 weeks at the rate of \$299.00 per week, until fully paid or until further order of the Director.

Claimant is further entitled to unauthorized medical up to the statutory maximum of \$350 upon presentation of an itemized statement verifying same.

Future medical benefits are awarded upon proper application to and approval by the Director of Workers Compensation.

Attorney's fees are approved subject to the provisions of K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent, insurance carrier and Kansas Workers Compensation Fund as follows:

Barber & Associates	
Transcript of regular hearing	\$270.80
Court Reporting Service	
Deposition of James L. Gluck, M.D.	Unknown
Deposition of Jerry Hardin	Unknown
Deposition of Sharon L. Fisher	Unknown
Don K. Smith & Associates	
Deposition of Karen Crist Terrill	\$172.75

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Tamara Pistotnik, Wichita, Kansas
Eric K. Kuhn, Wichita, Kansas
Eric Yost, Wichita, Kansas
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director